

REMARKS

Claims 1-27 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 1-20, drawn to processes for monitoring exogenous nucleic acid in transit;

Group II, claims 21, 22 and 24 in part, drawn to a process for identifying a cell competent to receive exogenous nucleic acid, the process comprising the step of identifying expression of a Sec3 protein in the cell;

Group III, claims 23 and 24 in part, drawn to a process for identifying a cell competent to receive exogenous nucleic acid, comprising the step of identifying expression of a component of Exocyst complex in the cell;

Group IV, claims 26 and 27, drawn to a process for producing cells competent to receive exogenous nucleic acid; and

Group V, claims 25, drawn to a kit for monitoring exogenous nucleic acid in transit.

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 1-20.

Traverse of the restriction requirement is raised as follows:

First, the present application is a National Stage application of a PCT application and as such the Examiner must apply the Unity of Invention standards of Rule 13.1. The Examiner has paid lip service to this, asserting that the claims relate to distinct technical features of

process for monitoring exogenous nucleic acid in transit;

process for identifying a cell competent to receive exogenous nucleic acid, the process comprising the step of identifying expression of a Sec3 protein in the cell;

process for identifying a cell competent to receive exogenous nucleic acid, comprising the step of identifying expression of a component of Exocyst complex in the cell;

process for producing cells competent to receive exogenous nucleic acid; and

kit for monitoring exogenous nucleic acid in transit.

This analysis merely states the preamble of each independent claim as though it were a separate technical feature and so is merely conclusory. In fact, the present invention relates to the unifying technical feature of a method for observing the uptake of an exogenous nucleic acid and its progress through a cell in the process of “transformation” or “transfection”. The Examiner has not provided any prior art reference that establishes that this technical feature is in the prior art and thus insufficient to support unity of invention. With respect to the claims of Groups III and IV, the identification of the Exocyst complex and Sec3 as elements of the uptake and transport process (see, *e.g.* Example VII beginning at p. 42 of the specification, esp. at p. 48) does not define embodiments utilizing these elements as lacking the “special technical feature” of the invention, even if these embodiments might include an additional technical feature.

As the Examiner has not provided sufficient evidence of lack of unity of invention, all of claims 1-27 should be examined in the present application.

The Examiner should at least consider that the kit claims of Group V should be examined together with the method claims 1-20 of Group I, as the kit is “specially adapted” for use in the claimed method. The Applicant notes at least element (d) of claim 25.

Furthermore, the Applicant submits that at least Groups III and IV should be rejoined. The Examiner should consider that Sec3 is one component protein within the Exocyst complex. See, *e.g.* page 48 of the specification.

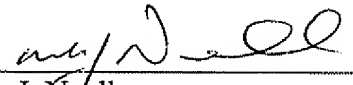
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mark J. Nuell, Registration No. 36,623, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: December 1, 2006

Respectfully submitted,

By 
Mark J. Nuell
Registration No.: 36,623
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant